BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Establish Policies and Cost Recovery Mechanisms for Generation Procurement and Renewable Resource Development.	Rulemaking 01-10-__

ORDER INSTITUTING RULEMAKING

I. Summary

This order instituting rulemaking (OIR) will establish ratemaking mechanisms to enable the three major investor-owned electric utilities, Southern California Edison Company (Edison), San Diego Gas and Electric Company (SDG&E) and Pacific Gas and Electric Company (PG&E), to resume purchasing electric energy, capacity, ancillary services and related hedging instruments to fulfill their obligation to serve and meet the needs of their customers. The need for this rulemaking has arisen because of the demise of the Power Exchange and because, since January 2001, Edison and PG&E have been unable to secure financing that would enable them to purchase the energy and related services needed to fill their customers' needs. Because of this situation, the Legislature enacted ABX1 1, which authorized the California Department of Water Resources (DWR) to purchase the utilities' needs on their behalf (with the utilities acting, in effect, as DWR's billing agent). However, under Section 80260 of the Water Code (which was enacted as part of ABX1 1), DWR's authority to make such purchases expires on December 31, 2002.

In addition, this OIR will consider proposals on how the Commission should comply with Public Utilities Code Section 701.3, which requires that

renewable resources be included in the mix of new generation facilities serving the state. While purchasing power for the utilities, DWR has not acquired any significant amount of new renewable resources. The Commission will herein solicit proposals regarding what actions the utilities should take to ensure the continued development of renewable resources.

II. Introduction and Background

A. Provisions in the Edison and SDG&E MOUs for a Procurement Cost Recovery Mechanism (PCRM)

PG&E, Edison and SDG&E have pursued very different approaches to the financial problems that accumulated for them between June 2000 and the Spring of 2001. On April 6, 2001, PG&E filed a voluntary petition to reorganize pursuant to Chapter 11 of the Bankruptcy Act of 1986.[1] Edison and its corporate parent, on the other hand, entered into a Memorandum of Understanding (MOU) with DWR on April 9, 2001 that was designed to return Edison to financial health without resort to bankruptcy proceedings.

In its MOU, Edison agreed to: (1) sell its transmission system to the State of California for $2.76 billion, (2) provide the output of its generation facilities to retail customers at cost-based rates for 10 years, (3) dismiss a series of lawsuits brought against the Commission under the Filed Rate Doctrine, the Takings Clause of the Fifth Amendment, and other constitutional and statutory provisions, and (4) grant perpetual conservation easements to the State for over

[1] *In re Pacific Gas and Electric Company*, U.S. Bankruptcy Court, Northern District of California, Case No. 01-30923-SFM (Chapter 11).

21,000 acres of land connected with Edison's hydroelectric facilities. The April 9 MOU also contemplated that the Legislature and the Commission would authorize Edison to sell bonds to amortize the remaining portion of the debt that Edison had accumulated since the Summer of 2000 in purchasing power for its customers.

On June 18, 2001, SDG&E and its corporate parent, Sempra Energy, also entered into an MOU with DWR. This latter MOU provided for (1) sale of the SDG&E transmission system to the State for approximately $1 billion, (2) the "settlement, disposition and elimination" through various means of a balance of approximately $750 million in the "undercollection" balancing account established for SDG&E pursuant to AB 265, and (3) the dedication by SDG&E to its retail customers of the output of generation resources that SDG&E owns or in which it has an interest.

Significantly for the purposes of this proceeding, both the Edison MOU and the SDG&E MOU contemplate the resumption by January 1, 2003 -- *i.e.*, the date on which DWR's net short purchasing authority will expire -- of purchases by these two utilities to cover the net short positions of their retail customers. Both MOUs acknowledge, however, that this cannot occur without a return to creditworthiness by the utilities. Both MOUs also recite that such a return to creditworthiness cannot occur unless the utilities are assured of prompt recovery of costs reasonably incurred to cover net short positions. On this issue, the Edison MOU states:

> "Accordingly, the CPUC Implementing Decisions will include confirmation of SCE's entitlement to recover its reasonable procurement costs on a timely basis and establish procedures (which may include one or more balancing accounts and trigger mechanisms) designed to ensure that

> any undercollection or overcollection of procurement costs will be reconciled in a timely manner and any undercollection will be able to be financed on reasonable terms consistent with SCE being an investment grade credit, and mechanisms to mitigate the potential risks of retrospective reasonableness review of procurement practices, including the development of a framework and criteria for procurement practices, the submission of an annual procurement plan, and the prompt approval or disapproval of contracts (the '*Procurement Cost Recovery Mechanism*')." (Edison MOU, p. 30.)

The SDG&E MOU describes the need for a procurement cost recovery mechanism in very similar language:

> "Given the magnitude of the net short, the practical ability of Utility [*i.e.*, SDG&E] to resume such procurement responsibility after the Procurement Resumption Date will depend in substantial part upon continuation of Utility's creditworthiness and its ability to recover such procurement costs in rates on a timely basis. Accordingly, the CPUC Implementing Decisions will include confirmation of Utility's entitlement to recover its reasonable procurement costs on a timely basis and establish procedures (which may include one or more balancing accounts and trigger mechanisms) designed to ensure that any undercollection or overcollection of procurement costs will be reconciled in a timely manner and any undercollection will be able to be financed (in the capital or credit markets) on reasonable terms consistent with Utility continuing to be an investment grade credit, and mechanisms to mitigate the potential risks of retrospective reasonableness review of procurement practices, including the development of a framework and criteria for procurement practices (the '*Procurement Cost Recovery Mechanis*'). The Procurement Cost Recovery Mechanism shall also provide that any contracts, if any, that CDWR assigns or subcontracts to Utility shall be deemed reasonable *per se*." (SDG&E MOU, p. 17.)

B. Edison's Motion To Establish a PCRM

On May 4, 2001, Edison filed a motion in the electric restructuring docket, R.94-04-031/I.94-04-032, seeking Commission adoption of a PCRM proposal. The most critical ingredient of this proposal was an annual procurement plan, which Edison described but did not attach to the motion. The annual plan was to be filed under seal and available (via a nondisclosure agreement) only to Commission personnel and persons not "affiliated with wholesale market participants." Edison urged that the plan should be approved or modified within 90 days after submission, and that the plan as adopted by the Commission would then become the basis for evaluating all procurement transactions covered by it. Edison gave the following description of what the procurement plan would cover:

> "The Procurement Plan will specify the products to be purchased (including related products required for the production of electricity, such as natural gas supplies and emissions credits), the quantity ranges and timing of the purchases, the duration of contracts, acceptable delivery points for products, the process used to procure power (and production inputs)**,** and the market and evaluation criteria which SCE proposes to use in making its procurement decisions for the period covered by the Procurement Plan. It will also set out the applicable demand and generation assumptions. The Procurement Plan will also identify indirect categories of procurement costs, including the cost of maintaining collateral, liquidity and equity support, and how SCE proposes to minimize such costs." (May 4 Motion, p. 9.)

Edison also proposed that shortly after the completion of each individual procurement transaction of a type covered by the plan, the utility would submit, as a compliance filing, an information package on the transaction.

Transactions within the parameters of the approved plan would be considered reasonable *per se* and not subject to challenge. For transactions subject to a reasonableness review, Edison proposed that Commission staff should have 15 days within which to give notice of its intent to challenge the transaction's reasonableness. Edison also proposed that any such reasonableness review would have to be completed within 60 days after submission of the information package, and that arbitrators could be used for this purpose, if necessary.[2] In the event a transaction were found to be unreasonable, Edison proposed that its shareholders be entitled to keep "all gain or loss net of the reasonable alternative."

C. SDG&E's Motion To Establish a PCRM

On July 16, 2001, SDG&E filed a motion in R.94-04-031/I.94-04-032 concerning the schedule for adopting a PCRM proposal. SDG&E stated that, after conferring with Commission staff, it intended to file a detailed PCRM proposal no later than August 24, 2001. The July 16 motion urged the Commission to require responses to this filing within 15 days, and that after giving SDG&E a 10-day period within which to file reply comments, the Commission should adopt a decision on SDG&E's PCRM proposal "as soon as possible."

As promised, SDG&E filed its PCRM proposal on August 24, 2001. The 37-page proposal was considerably more detailed than Edison's, but SDG&E

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[2] Edison also stated that in the case of large, long-term contracts, it might choose to submit a justification package to the Commission's staff *before* the contract was executed. Edison proposed that in such a case, the same 15-day period for initial assessment, and 60-day period for reasonableness determination, would apply.

noted that three major areas of uncertainty would have to be resolved before the utility could submit a draft of the annual procurement plan that it proposed. First, the mechanism for allocating the energy and related products contracted for by DWR would have to be clarified.[3] Second, the resource planning role of the new California Power Authority would have to be defined.[4] Third, the amount of load to be served through direct access would have to be determined.[5]

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[3] SDG&E advocated that the DWR contracts should be administered on a statewide basis, because "efforts to earmark these resources in pieces to parts of the state will diminish their overall value and add to inefficiency," and would create relative winners and losers. (Pages 33-34.) On the other hand, SDG&E also argued that its customers should be allocated only those DWR energy products that these customers needed, and did not address the question of who would pay for resources that were not needed by *any* of the IOUs' ratepayers.

[4] SDG&E noted that the legislation creating the Power Authority appeared to contemplate a resource planning role for the new agency, because SB 1-x 6 required the Power Authority to develop an "investment plan" addressing such issues as service reliability and grid congestion. (Page 9.) SDG&E continued that if the Power Authority did assume certain resource planning functions, the logical place to coordinate these functions and the allocation of DWR contracts was in an annual procurement plan review at the CPUC. (*Id.* at 22.)

[5] SDG&E proposed that customers wishing to take service through direct access should be required to disclose this fact between the 180th and the 90th day before the annual procurement plan was due to be filed. Customers with loads of 20 Kwh and above would be required to make commitments with alternative suppliers of at least five years' duration, and smaller customers would have to make commitments for at least one year. All customers opting for direct access would be required to pay an "exit fee" representing the cost of covering "commitments made by CWR and utility retained generation [URG] committed to those customers in order to protect remaining customers." In the event a direct access customer returned to SDG&E's system prematurely, the utility proposed that the customer be required to pay a "reentry fee," and that purchases made by SDG&E on behalf of such customers should be at spot market prices. (Pages 7-8.)

Once these questions were answered and the precise size of its net short obligation known, SDG&E proposed a four-step process for developing its procurement plan. In the first step, using econometric models and other standard forecasting techniques, SDG&E proposed to identify its customers' needs for both energy and ancillary services over a five-year period. (Page 13-14.) In the second step, SDG&E would make a preliminary assessment of the types of resources (*e.g.*, base, intermediate, peaking and ancillary services) needed to meet expected demand on both typical and abnormal winter and summer days. Generic pricing assumptions would be used for this purpose. (*Id.* at 15-19.)

In the third step, SDG&E would make a risk management assessment. Using tools such as value-at-risk analysis, SDG&E proposed to specify what portion of the overall needed resource mix should be fixed at the time of commitment, and what portion should be left to vary with current market conditions, so as to "increase the likelihood of locking in low prices during periods of projected supply surpluses and reduce the possibility of locking in high prices for a significant portion of SDG&E's incremental resource requirements." (*Id.* at 19-20.)

The final step in the process would be the development of a procurement methodology to obtain the necessary resources. This methodology would include the use of requests for proposals (RFPs), customized energy contracts adapted to SDG&E's distinctive load profiles, and use of the ISO's real-time market for shaping purposes. (*Id.* at 21-28.)

SDG&E also argued that since short-term transactions do not lend themselves to an RFP process, the Commission should focus on the adequacy of the steps in the utility's short-term procurement process, and that if these steps were followed, they would "result in short term procurement that is eligible for full cost recovery." The proposed steps include a monthly survey of short-term market conditions, as well as monthly and daily trading plans (with the latter including not-to-exceed prices), and a controls system to ensure that trades match the plan. (*Id.* at 27-28.)

D. Comments on Utility Proposals

On May 21, 2001, responses to Edison's motion were filed by the Office of Ratepayer Advocates (ORA), The Utility Reform Network (TURN), SDG&E, Enron Wind Corporation (Enron Wind) and CE Generation L.L.C. (CE Generation). With the exception of SDG&E, all of the respondents urged that Edison's motion should be denied, although they agreed that procurement issues would need to be dealt with soon.

In its response, ORA argued that the Commission should not approve Edison's proposal without reviewing a sample of the procurement plan, and that it would be unreasonable to expect the Commission to rule upon the sufficiency of the first procurement plan within 90 days, as Edison had requested. ORA also argued that the proposed 60-day period for completing reasonableness reviews would be inadequate, because two months would not allow ORA sufficient time to conduct discovery, perform an analysis and prepare a recommendation, as it had done in past reasonableness reviews. ORA was especially critical of Edison's proposal that any transaction consistent with the plan should be deemed reasonable *per se*, even if recent developments in the market cast doubt upon the wisdom of the transaction.

ORA also suggested that it made little sense to consider power procurement in isolation from other options available to the utility to meet its customers' needs. ORA continued that if the Commission were inclined to consider Edison's approach, it should do so only in the larger context of Integrated Resource Planning (IRP):

> "If the Commission wishes to continue down the path proposed by Edison of reviewing Procurement Plans, the Commission might first want to consider energy procurement more formally as simply one element of [IRP]. In this way, power procurement by utilities can be considered *simultaneously* with other potentially cost-effective measures such as transmission expansion, distribution system enhancement, distributed generation, energy-efficiency programs, and new generating capacity. ORA recommends against continued Balkanization of the planning process and reviewing energy procurement in isolation from these other elements." (ORA Response, p. 7.)

TURN's comments on the Edison motion echoed many of ORA's concerns, and also raised additional issues. In particular, TURN argued that it would be contrary to well-established Commission practice and sound public policy if, as Edison suggested, only Commission staff were to be granted access to the compliance filings on individual procurement transactions.

In its response, SDG&E argued that both its procedural and substantive circumstances were different from Edison's, so that any ruling on Edison's motion should not be considered a precedent for handling SDG&E procurement issues. On procedural matters, SDG&E pointed out that while it also had an agreement with DWR concerning the latter's purchases to cover SDG&E's net short position, that agreement was not comparable to the Edison MOU. Second, SDG&E pointed out that recent rulings in A.00-10-045/A.01-01-044 made it clear that the Commission intended to consider post-2002 procurement issues for SDG&E in those dockets. Thus, SDG&E concluded that the Commission should "resolve Edison MOU issues [in this proceeding] without setting any precedent for SDG&E." (SDG&E Response, p. 3.)

SDG&E also contended that its substantive circumstances were different from Edison's. Unlike SDG&E, which had been required to divest all of its generation resources except its interest in San Onofre Nuclear Generating Station (SONGS), Edison had retained ownership of substantial generation assets that enabled Edison to meet its entire net short position at certain times, as well as to provide load-following capabilities and ancillary services to its customers in some circumstances. Because of these differences, SDG&E asserted, the kind of policy guidance that SDG&E and Edison required on procurement issues was quite different.[6]

In their comments, CE Generation and Enron Wind raised issues related to Qualifying Facilities (QFs). CE Generation argued that Edison's motion should be denied because, like the Edison MOU, the motion failed to make any provision for paying QFs on a going-forward basis, or for reimbursing them for the amounts due from November 2000 to April 2001 (when Edison suspended QF payments). Enron Wind argued that Edison's motion should be denied because the proposed procurement plan failed to deal with QFs producing energy from renewable resources, which Enron Wind asserted were "the *best* hedge against gas price volatility."

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[6] Moreover, SDG&E noted that it operated under two unique pieces of legislation – AB 265, which capped commodity rates for small customers, and AB1X-43, which froze commodity rates for large SDG&E customers – that made it appropriate to treat procurement issues for SDG&E separately. (*Id.* at 4-6.)

In addition to the parties mentioned above, the California Energy Commission (CEC) submitted comments concerning Edison's motion on June 14, 2001, along with a motion asking for leave to file these comments late. The CEC's comments were concerned almost exclusively with Edison's proposal to make the procurement plan available only to CPUC staff and parties who entered into a nondisclosure agreement, and to make the compliance filings regarding particular procurement transactions available only to CPUC staff.

The CEC's principal objection was that Edison's confidentiality proposals would limit access to data that the CEC asserted was necessary to carry out its statutory duties. After noting its "lengthy history" of evaluating California energy portfolios to assess both supply-side and demand-side resources, the CEC argued that it was "well positioned to anticipate resource shortages," but that this capability would be undermined – and that the CEC would not be able to account for resources tied up in Edison contracts – if it was denied access to Edison's proposed compliance filings. The CEC also argued that its staff should not be required to sign nondisclosure agreements or to furnish resumes, as Edison had requested, because the CEC had regulations in place to protect data designated as confidential, and had an excellent track record of honoring such designations.[7]

On September 10, 2001, ORA and the New Power Company (New Power) filed responses to SDG&E's procurement motion. In its response, ORA agreed with SDG&E that one of the Commission's highest priorities is to "sort

[7] On June 29, 2001, with the permission of the assigned ALJ, Edison filed a brief reply to the CEC's comments.

out the allocation of the CDWR contracts among the utilities." ORA argued that until this was accomplished, the Commission could not have a good understanding of SDG&E's net short needs, or intelligently design a mechanism to meet those needs. ORA also criticized various aspects of SDG&E's proposal, and objected strongly to the suggestion that only 15 days be allowed for comments on SDG&E's proposal.

In its comments, New Power noted SDG&E's openness to considering whether all or a portion of the net short needs of retail customers should be met through third-party providers, and urged that a separate phase of the proceeding be established to consider this question and the various questions that it raised.

E. The Elimination of Direct Access and the CPUC-Edison Settlement in the Filed Rate Doctrine Lawsuit

Since the filing of Edison's and SDG&E's motions to establish a PCRM, there have been at least two major developments that bear directly on the utilities' PCRM proposals. First, on September 20, 2001, this Commission issued Decision (D.) 01-09-060, which suspended, effective immediately, the right of retail end-use customers to acquire direct access service from electric service providers (ESPs). D.01-09-060 also expressly reserved "the right to modify this order to include the suspension of all direct access contracts executed, agreements entered into or arrangements made on or after July 1, 2001." (*Mimeo.* at 11, Conclusion of Law 5.) Clearly, the new circumstances brought about by D.01-09-060 will need to be taken into account in evaluating SDG&E's proposal to require direct access customers to give notice of their plans, and to secure appropriate commitments from ESPs, 90-180 days before the filing of SDG&E's proposed procurement plan.

The second major development is the settlement agreement in the so-called Filed Rate Doctrine case[8] that was entered into by Edison and this Commission on October 2, 2001.

The effect of this settlement agreement, which was approved by Judge Ronald Lew and on which he entered judgment on October 5, 2001, is to moot the provisions of the Edison MOU. However, like the MOU, the settlement agreement is designed to restore Edison to creditworthiness so that it can resume purchasing power to fill the net short needs of its retail customers. This purpose is explicitly stated in Recital F of the settlement agreement, which states that one of the agreement's purposes is "to restore the investment grade creditworthiness of SCE as rapidly as reasonably practical so that it will be able to provide reliable electric service as a state regulated entity as it has in the past." Like the MOU, the settlement agreement also recognizes that the restoration of creditworthiness is unlikely to occur unless there are predictable and stable mechanisms by which Edison can recover its power procurement costs. On this issue, Recital H states:

> "The CPUC and SCE acknowledge that a reasonable and predictable regulatory framework for procurement activities of, and recovery of procurement costs by, SCE is important to SCE's procuring all of the electricity needed to serve its customers and the payment of its Procurement Related Liabilities."[9]

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[8] *Southern California Edison Company v. Lynch, et al.*, Case No. 00-12056-RSWL (Mcx), United States District Court, Central District of California.

[9] Section 2.4 of the settlement agreement authorizes Edison to apply for up to $250 million in recoverable costs for the purpose of "acquir[ing] financial instruments and engag[ing] in other transactions intended to hedge fuel cost risks …" Section 2.4 also provides that this Commission will "reasonably promptly" schedule proceedings to

Footnote continued on next page

F. Alternative Framework

We are interested in fully exploring each utility's preferred procurement mechanism. In addition, we will ask each respondent utility to submit an alternative mechanism that is consistent with recent legislative conversation surrounding the still-pending AB 57 (See Appendix B).

Within the Alternative Framework, each electric utility would be required to file a proposed procurement plan within a prescribed period after this Commission specifies the allocation of electricity, including quantity, characteristics, and duration of electricity delivery, to be provided by DWR under its power purchase agreements. The Commission would adopt a procurement plan for each utility prior to the date on which the utility proposes to resume purchasing the net short needs of its retail customers.

A proposed plan would specify the types of electrical products that would be purchased, an assessment of the price risk associated with the utility's total portfolio (including its own URG), procedures for updating the procurement plan, a statement of the criteria that would determine a particular transaction's eligibility for rate recovery, procedures that would apply to any competitive procurement process by which the utility would seek bids for procurement-related services, a showing that the plan includes a suitably diversified mix of long- and short-term electricity products, and a statement of the utility's risk management policy, strategy and practices.

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consider Edison's proposals for hedging instruments. In its November 21 submittal, Edison should describe the proposed hedging transactions in detail, so that we will be in a position to act promptly on them at the appropriate time.

The overall objectives of a procurement plan include enabling the utility to serve its customers at just and reasonable rates, eliminating the need for reasonableness reviews of transactions covered by the plan, ensuring the timely recovery in rates of procurement costs covered by the plan, and moderating the price risk associated with serving retail customers.

In this discussion, we do not intend to express a preference for purchases from third-party power providers as a means for a utility to meet its obligation to serve its customers reliably and at just and reasonable rates. Any procurement proposal must be considered in the context of a broader, integrated assessment of needs that would include other options such as utility ownership of resources, energy efficiency, demand side programs, and transmission options.

G. Public Utilities Code Section 701.3

Public Utilities Code Section 701.3 states:

> Until the Commission completes an electric generation procurement methodology that values the environmental and diversity costs and benefits associated with various generation technologies, the commission shall direct that a specific portion of future electrical generating capacity needed for California be reserved or set aside for renewable resources.

Currently, there exists no "procurement methodology" consistent with the provisions in Public Utilities Code Section 701.3, nor has there been significant development of renewable resources in the current market environment. The Commission must consider means of complying with the requirement that renewable resources be developed.

A number of issues must be considered in connection with renewable resource development, including the following:

- The amount of new renewable resources that should be developed to comply with Public Utilities Code Section 701.3.

- Coordination of the amount and timing of renewable resource development with the resource needs of consumers.

- How funding available from the California Power Authority should be used.

III. Process

We will require Edison, SDG&E and PG&E – each of which is made a respondent in this proceeding – to submit proposals for procurement cost recovery mechanisms. Edison and SDG&E will be required to update the proposals they submitted on May 4 and August 24, respectively, and PG&E will be required to submit a new proposal. To the extent their proposals are not consistent with the Alternative Framework described above, each respondent utility should also include at least one proposal that is consistent with the framework discussed in AB 57.

As urged by several of the commenters on Edison's proposal, each respondent utility will also be required to provide one or more illustrative examples of the plans they would submit under their proposed mechanisms. Such plans should include the construction or purchase of generation facilities, as appropriate. In addition, we will require the respondent utilities to include in their submittals methods for meeting the requirement for renewable resource development set forth in Public Utilities Code Section 701.3.

A. Preliminary Scoping Memo

This rulemaking will be conducted in accordance with Article 2.5 of the Commission's Rules of Practice and Procedure. As required by Rule 6(c)(2), this order includes a preliminary scoping memo as set forth below.

The issues to be considered in this proceeding are:

(1) What sort of procurement mechanisms should the Commission adopt to enable Edison, SDG&E and PG&E to resume procurement to cover the net short positions of their respective retail customers on or before January 1, 2003?

(2) How should the procurement mechanisms the Commission adopts account for renewable resources so as to comply with the requirements of Section 701.3 of the Public Utilities Code?

Pursuant to Rule 6(c)(2), we preliminarily determine the category of this rulemaking proceeding to be ratesetting, as that term is defined in Rule 5(c).

Although we think that any evidentiary hearings that may be required in this proceeding will be limited in scope, we will not be able to determine that until the respondent utilities have submitted their proposals and interested parties have had an opportunity to comment on them. As indicated below, the assigned Commissioner will hold a prehearing conference (PHC) after the comments on the respondent utilities' proposals have been received.

The timetable for this proceeding will be determined by the assigned Commissioner through his or her ruling on the scoping memo after he or she has received input from the parties at the PHC. However, for purposes of meeting the preliminary scoping memo requirements and getting this proceeding underway as quickly as possible, we establish the following schedule:

October 25, 2001	Order Instituting Rulemaking
November 21, 2001	Edison, SDG&E and PG&E submit procurement proposals, including one that is fully consistent with AB 57
December 14, 2001	Interested parties submit comments on respondent utilities' proposals
January 8, 2002	PHC held
December 15, 2002	Final decision on Commission agenda

Any person other than a respondent who objects to the preliminary categorization of this rulemaking, the need for hearings, or the issues raised in this preliminary scoping memo shall raise such objection(s) in the comments to be filed on December 14, 2001. The respondents may raise any such objections in their proposals due on November 21, 2001.

The assigned Commissioner through his or her ruling on the scoping memo and subsequent rulings, and the assigned Administrative Law Judge by ruling with the assigned Commissioner's concurrence, may adjust the timetable as necessary during the course of the proceeding. We do not anticipate that this proceeding will require longer than 18 months to complete.

Following the PHC, the assigned Commissioner will issue a ruling that determines the category, need for hearing, and schedule for this rulemaking, and designates the principal hearing officer pursuant to Rules 6(c)(2) and 6.3. The assigned Commissioner's ruling as to the determination of category only may be appealed pursuant to the procedures set forth in Rule 6.4.

B. Parties and Service List

We will serve this OIR on the parties in our electric restructuring proceeding, R.94-04-031/I.94-04-032, as well as parties in the "rate stabilization" proceedings, A.00-11-038, A.00-11-056 and A.00-10-028. These proceedings have large service lists that should include all persons likely to be interested in the procurement issues we are considering here. In addition, our Executive Director should cause the OIR to be served on the Executive Director of the California Energy Commission and on the California Power Authority.

Within 15 days from the mailing date of this order, any person or representative of an entity interested in monitoring or participating in this proceeding should send a letter to the Commission's Process Office and to the Public Advisor's Office, both of which are located at 505 Van Ness Avenue, San Francisco, California 94102, requesting that the person or representative's name be placed on the service list. The Process Office will thereafter create a new service list and distribute it to all parties in this proceeding, and the new service list will also be posted on the Commission's web site, www.cpuc.ca.gov, as soon as is practicable. The assigned Commissioner, and the assigned ALJ acting with the assigned Commissioner's concurrence, will have ongoing oversight of the service list and may institute changes to the list or the procedures governing it as necessary.

Any party interested in participating in this rulemaking who is unfamiliar with the Commission's procedures should contact the Public Advisor's Office in Los Angeles at (213) 576-7056, or in San Francisco at (415) 703-2074, (866) 836-7875 (TTY – toll free) or (415) 703-5282 (TTY).

All parties shall abide by the Electronic Service Proposals set forth in Appendix A to this OIR.

C. *Ex Parte* Communications

This proceeding is subject to Rule 7, which specifies standards for engaging in *ex parte* communications and the reporting of such communications. Pursuant to Rule 7(a)(4), until the assigned Commissioner has made an appealable determination of category as provided for in Rules 6(c)(2) and 6.4, *ex parte* communications will be permitted only in accordance with Rule 7(c). Following the Commissioner's determination, the applicable *ex parte* communication and reporting requirements will depend on such determination, unless and until the Commission modifies the determination pursuant to Rule 6.4 or 6.5.

Therefore, **IT IS ORDERED** that:

1. A rulemaking is instituted on the Commission's own motion to examine the Commission's procedures for electric utility procurement cost recovery and the development of renewable resources.

2. Pacific Gas and Electric Company (PG&E), Southern California Edison (Edison), and San Diego Gas and Electric Company (SDG&E), are made respondents to this proceeding.

3. The Executive Director shall cause this Order Instituting Rulemaking (OIR) to be served on the respondents, the Executive Director of the California Energy Commission, the California Power Authority, and on the parties to the following Commission proceedings: Rulemaking (R.) 94-04-031/Investigation (I.) 94-04-032 and Application (A.) 00-11-038, 00-11-056 and 00-10-028.

4. Within 15 days from the mailing date of this order, any person or representative of an entity who is interested in monitoring or participating in this rulemaking should send a letter to the Commission's Process Office and to the Public Advisor's Office, both of which are located at 505 Van Ness Avenue, San Francisco, California 94102, asking that the person's or representative's name be placed on the service list for this proceeding.

5. After service of this order and receipt of the letters referred to in Ordering Paragraph 4, a new service list for the proceeding will be developed by the

Process Office. The assigned Commissioner, and the assigned Administrative Law Judge (ALJ) by ruling with the assigned Commissioner's concurrence, shall have ongoing oversight of the service list and may institute changes to the list or the procedures governing it as necessary.

6. The category of this rulemaking is preliminarily determined to be "ratesetting" as that term is defined in Rule 5(c) of the Commission's Rules of Practice and Procedure.

7. This proceeding is preliminarily determined to require evidentiary hearings.

8. The expected timetable for this proceeding is as set forth in the body of this OIR. The assigned Commissioner through his or her scoping memo and subsequent rulings, and the assigned ALJ by ruling with the assigned Commissioner's concurrence, may adjust the timetable as necessary during the course of the proceeding. It is not anticipated that this proceeding will require longer than 18 months to complete.

9. Any respondent that objects to the preliminary categorization of this rulemaking, the need for hearings, or the proposed timetable shall raise any such objection in the proposal to be submitted by said respondent on November 21, 2001. Any other person who objects to the preliminary categorization of this rulemaking, the need for hearings, or the proposed timetable, shall raise any such objection in the comments on the respondents' proposals due on December 14, 2001.

10. All parties shall abide by the Electronic Service Protocols attached as Appendix A hereto.

This order is effective today.

Dated ____________________________, at San Francisco, California.

APPENDIX A
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ELECTRONIC SERVICE PROTOCOLS

Party Status in Commission Proceedings
These electronic service protocols are applicable to all "appearances." In accordance with Commission practice, by entering an appearance at a prehearing conference or by other appropriate means, an interested party or protestant gains "party" status. A party to a Commission proceeding has certain rights that non-parties (those in "state service" and "information only" service categories) do not have. For example, a party has the right to participate in evidentiary hearings, file comments on a proposed decision, and appeal a final decision. A party also has the ability to consent to waive or reduce a comment period, and to challenge the assignment of an Administrative Law Judge (ALJ). Non-parties do not have these rights, even though they are included on the service list for the proceeding and receive copies of some or all documents.

Service of Documents by Electronic Mail
For the purposes of this proceeding, all appearances shall serve documents by electronic mail, and in turn, shall accept service by electronic mail.

Usual Commission practice requires appearances to serve documents not only on all other appearances but also on all non-parties in the state service category of the service list. For the purposes of this proceeding, appearances shall serve the information only category as well since electronic service minimizes the financial burden that broader service might otherwise entail.

Notice of Availability
If a document, including attachments, exceeds 75 pages, parties may serve a Notice of Availability in lieu of all or part of the document, in accordance with Rule 2.3(c) of the Commission's Rules of Practice and Procedure.

Filing of Documents
These electronic service protocols govern service of documents only, and do not change the rules regarding the tendering of documents for filing. Documents for filing must be tendered in paper form, as described in Rule 2, *et seq.*, of the Commission's Rules of Practice and Procedure. Moreover, all filings shall be served in hard copy (as well as e-mail) on the assigned ALJ.

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Electronic Service Standards
As an aid to review of documents served electronically, appearances should follow these procedures:

> Merge into a single electronic file the entire document to be served (*e.g.*, title page, table of contents, text, attachments, service list).
>
> Attach the document file to an electronic note.
>
> In the subject line of the note, identify the proceeding number; the party sending the document; and the abbreviated title of the document.
>
> Within the body of the note, identify the word processing program used to create the document. (Commission experience indicates that most recipients can open readily documents sent in Microsoft Word or PDF formats.)

If the electronic mail is returned to the sender, or the recipient informs the sender of an inability to open the document, the sender shall immediately arrange for alternative service (paper mail shall be the default, unless another means is mutually agreed upon).

Obtaining Up-to-Date Electronic Mail Addresses
The current service lists for active proceedings are available on the Commission's web page, www.cpuc.ca.gov. To obtain an up-to-date service list of e-mail addresses:

> Choose "Proceedings" then "Service Lists."

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- Scroll through the “Index of Service Lists” to the number for this proceeding.

- To view and copy the electronic addresses for a service list, download the comma-delimited file, and copy the column containing the electronic addresses.

The Commission’s Process Office periodically updates service lists to correct errors or to make changes at the request of parties and non-parties on the list. Appearances should copy the current service list from the web page (or obtain paper copy from the Process Office) before serving a document.

Pagination Discrepancies in Documents Served Electronically
Differences among word-processing software can cause pagination differences between documents served electronically and print outs of the original. (If documents are served electronically in PDF format, these differences do not occur.) For the purposes of reference and/or citation in cross-examination and briefing, all parties should use the pagination found in the original document.

(END OF APPENDIX A)

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ASSEMBLY BILL 57

BILL NUMBER: AB 57 AMENDED
BILL TEXT

AMENDED IN SENATE SEPTEMBER 14, 2001
AMENDED IN SENATE JULY 18, 2001
AMENDED IN SENATE JULY 9, 2001
AMENDED IN ASSEMBLY APRIL 26, 2001
AMENDED IN ASSEMBLY APRIL 16, 2001

INTRODUCED BY Assembly Member Wright

DECEMBER 4, 2000

An act to add Section ~~332.3~~ *399.10* to the Public Utilities Code, relating to public utilities *, and making an appropriation therefor* .

LEGISLATIVE COUNSEL'S DIGEST

AB 57, as amended, Wright. Electrical ~~energy~~ *corporations* : ~~contracts~~ *procurement plans* .

~~The~~
(1) The Public Utilities Act imposes various duties and responsibilities on the Public Utilities Commission with respect to the purchase of electricity.

This bill would state findings and declarations regarding ~~short-term and long-term contracts for the purchase of electricity and would state the intent of the Legislature with respect to the procurement of electricity by an electrical corporation. The bill would declare the intent of the Legislature that an electrical corporation, as defined, shall create a diversified procurement portfolio consisting of both short-term and long-term electricity and electricity related products~~ providing *guidance to electrical corporations and the Public Utilities Commission for the procurement of electricity by an electrical corporation and providing for review by the commission of procurement plans of electrical corporations* .

This bill would amend the act to require the commission to ~~implement an incentive mechanism applicable to an electrical corporation's procurement of electricity for its customers in accordance with guidelines set forth in the bill. The bill would require the commission to reflect in bundled service rates, and to deem reasonable without engaging in a reasonableness review, any contract entered into by an electrical corporation~~
review and adopt a procurement plan for each electrical corporation

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in accordance with ~~guidelines~~ *elements, incentive mechanisms, and objectives* set forth in the bill.

The bill would authorize the commission to engage a highly capable independent consultant or advisory service to evaluate risk management and strategy. The bill would require the commission to adopt appropriate procedures to ensure the confidentiality of any market sensitive information submitted in an electrical corporation's proposed procurement plan or resulting from or related to its approved procurement plan, and to determine the impact of a proposed divestiture on an electrical corporations procurement plan.

The bill would allow an electrical corporation that serves less than 500,000 retail customers within the state to file with the commission a request for exemption from the provisions of the bill, which requested exemption the commission would be required to grant upon a showing of good cause.

(2) Existing law makes a violation of provisions of the Public Utilities Act a crime.

This bill, by imposing new requirements on electrical corporations, would expand the scope of that crime, and thus impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(4) The bill would appropriate $600,000 from the Public Utilities Commission Utility Reimbursement Account to the Public Utilities Commission for the purposes of implementing this bill.

Vote: ~~majority~~ *2/3* .
Appropriation: ~~no~~ *yes* . Fiscal committee: yes. State-mandated local program: ~~no~~ *yes* .

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

~~SECTION 1. (a) The Legislature finds and declares that the~~

SECTION 1. It is the intent of the Legislature to do all of the following:

(a) Provide guidance to electrical corporations and the Public Utilities Commission for the prospective procurement of electricity by an electrical corporation.

(b) Ensure, by no later than January 1, 2003, that each electrical corporation whose customers are currently being served by the Department of Water Resources will resume procurement for those needs that are not being met by the Department of Water Resources.

(c) Direct the Public Utilities Commission to review each electric

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corporation's procurement plan in a manner that assures creation of a diversified procurement portfolio, assures just and reasonable electricity rates, provides certainty to the electrical corporation in order to enhance its financial stability and creditworthiness, and eliminates the need, with specified exceptions, for after-the-fact reasonableness reviews of an electrical corporation's prospective electricity procurement performed consistent with an approved procurement plan.

SEC. 2. Section 399.10 is added to the Public Utilities Code, to read:

399.10. (a) Each electrical corporation shall file a proposed procurement plan with the commission 90 days after the commission specifies the allocation of electricity, including quantity, characteristics, and duration of electricity delivery, to be provided by the Department of Water Resources under its power purchase agreements to the customers of the electrical corporation. The proposed procurement plan shall specify the date the electrical corporation intends to resume procurement of electricity for its retail customers, consistent with its obligation to serve, which shall be referred to for purposes of this subdivision as the "proposed commencement date." The commission shall review and adopt a procurement plan as specified in subdivisions (b), (c), and (d) no later than 60 days prior to the proposed commencement date. No later than January 1, 2002, the commission shall specify the allocation of electricity, including quantity, characteristics, and duration of electricity delivery, to be provided by the Department of Water Resources under its power purchase agreements to the customers of each electrical corporation, which shall be reflected in an electrical corporation's proposed procurement plan.

(b) An electrical corporation's proposed procurement plan shall include, but is not limited to, the following:

(1) An assessment of the price risk associated with the electrical corporation's portfolio, including any utility-retained generation, existing power purchase and exchange contracts, and proposed contracts or purchases under which an electrical corporation will procure electricity and electricity-related products and the remaining open position to be served via spot market transactions.

(2) A definition of each electricity product, electricity-related product, and procurement related financial product, including support and justification for the product type and amount to be procured under the plan.

(3) The duration of the plan.

(4) The duration, timing, and range of quantities of each product to be procured.

(5) A competitive procurement process under which the electrical corporation may request bids for procurement-related services, including the format and criteria of that procurement process.

(6) An incentive mechanism, if any incentive mechanism is proposed, including the type of transactions to be covered by that mechanism, their respective procurement benchmarks, and other parameters needed to determine the sharing of risks and benefits.

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(7) The upfront standards and criteria by which the acceptability and eligibility for rate recovery of a proposed procurement transaction will be known by the electrical corporation prior to execution of the transaction. This shall include an expedited approval process for the commission's review of proposed contracts and subsequent approval or rejection thereof. The electrical corporation shall propose alternative procurement choices in the event a contract is rejected.

(8) Procedures for updating the procurement plan.

(9) A showing that the procurement plan will create or maintain a diversified procurement portfolio consisting of both short-term and long-term electricity and electricity-related products.

(10) The electrical corporation's risk management policy, strategy, and practices including specific measures of price stability.

(11) A plan to achieve appropriate increases in diversity of ownership and diversity of fuel supply of nonutility electrical generation.

(12) A mechanism for recovery of reasonable administrative costs related to procurement in the generation component of rates.

(c) The commission shall review and accept, modify, or reject each electrical corporation's procurement plan. The commission's review shall consider each electrical corporation's individual procurement situation, and shall give strong consideration to that situation in determining which one or more of the features set forth in this subdivision shall apply to that electrical corporation. A procurement plan approved by the commission shall contain one or more of the following features, provided that the commission shall not approve a feature or mechanism for an electrical corporation if it finds that the feature or mechanism would impair the restoration of an electrical corporation's creditworthiness or would lead to a deterioration of an electrical corporation's creditworthiness:

(1) A competitive procurement process under which the electrical corporation may request bids for procurement-related services. The commission shall specify the format of that procurement process, as well as criteria to ensure that the auction process is open and adequately subscribed. Any purchases made in compliance with the commission-authorized process shall be recovered in the generation component of rates.

(2) An incentive mechanism that establishes a procurement benchmark or benchmarks and authorizes the electrical corporation to procure from the market, subject to comparing the electrical corporation's performance to the commission-authorized benchmark or benchmarks. The incentive mechanism shall be clear, achievable, and contain quantifiable objectives and standards. The incentive mechanism shall contain balanced risk and reward incentives and will limit the risk and reward of an electrical corporation.

(3) Upfront achievable standards and criteria by which the acceptability and eligibility for rate recovery of a proposed procurement transaction will be known by the electrical corporation prior to the execution of the bilateral contract for the transaction.

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The commission shall provide for expedited review and either approve or reject the individual contracts submitted by the electrical corporation to ensure compliance with its procurement plan. To the extent the commission rejects a proposed contract pursuant to this criteria, the commission shall designate alternative procurement choices obtained in the procurement plan that will be recoverable for ratemaking purposes.

(d) A procurement plan approved by the commission shall accomplish each of the following objectives:

(1) Enable the electrical corporation to fulfill its obligation to serve its customers at just and reasonable rates.

(2) Eliminate the need for after-the-fact reasonableness reviews of an electrical corporation's actions in compliance with an approved procurement plan, including resulting electricity procurement contracts, practices, and related expenses. However, the commission may establish a regulatory process to verify and assure that each contract was administered in accordance with the terms of the contract, and contract disputes which may arise are reasonably resolved.

(3) Ensure timely recovery of prospective procurement costs incurred pursuant to an approved procurement plan. The commission shall establish rates based on forecasts of procurement costs adopted by the commission, actual procurement costs incurred, or combination thereof, as determined by the commission. The commission shall establish power procurement balancing accounts to track the differences between recorded revenues and costs incurred pursuant to an approved procurement plan. The commission shall review the power procurement balancing accounts, not less than semiannually, and shall adjust rates or order refunds, as necessary, to promptly amortize a balancing account. Until January 1, 2006, this adjustment shall occur no later than when the power procurement balancing account adjustment is overcollected or undercollected in an amount that exceeds 5 percent of the electrical corporation's actual recorded generation revenues for the prior calendar year excluding revenues collected for the Department of Water Resources. After January 1, 2006, this adjustment shall occur when deemed appropriate by the commission consistent with the objectives of this section.

(4) Moderate the price risk associated with serving its retail customers, including the price risk embedded in its long-term supply contracts, by authorizing an electrical corporation to enter into financial and other electricity-related product contracts.

(5) Provide for just and reasonable rates, with an appropriate balancing of price stability and price level in the electrical corporation's procurement plan.

(e) The commission shall provide for the periodic review and prospective modification of an electrical corporation's procurement plan.

(f) The commission may engage a highly capable independent consultant or advisory service to evaluate risk management and strategy. The reasonable costs of any consultant or advisory service is a reimbursable expense and eligible for funding pursuant to

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Section 631.
(g) The commission shall adopt appropriate procedures to ensure the confidentiality of any market sensitive information submitted in an electrical corporation's proposed procurement plan or resulting from or related to its approved procurement plan, including, but not limited to, proposed or executed power purchase agreements, data request responses, or consultant reports, or any combination, provided that the Office of Ratepayer Advocates and other consumer groups that are nonmarket participants shall be provided access to this information under confidentiality procedures authorized by the commission.
(h) Nothing in this section alters, modifies, or amends the commission's oversight of affiliate transactions under its rules and decisions or the commission's existing authority to investigate and penalize an electrical corporation's alleged fraudulent activities, or to disallow costs incurred as a result of gross incompetence, fraud, abuse, or similar grounds.
(i) An electrical corporation that serves less than 500,000 electric retail customers within the state may file with the commission a request for exemption from this section, which the commission shall grant upon a showing of good cause.
(j) Prior to its approval pursuant to Section 851 of any divestiture of generation assets owned by an electrical corporation on September 1, 2001, the commission shall determine the impact of the proposed divestiture on the electrical corporation's procurement rates and shall approve a divestiture only to the extent it finds, taking into account the impact of the divestiture on procurement rates, that the divestiture is in the public interest and will result in net ratepayer benefits. Any electrical corporation's procurement necessitated as a result of the divestiture of generation assets on or after the effective date of the act adding this subdivision shall be subject to the mechanisms and procedures set forth in this section only if its actual cost is less than the recent historical cost of the divested generation assets, or if the commission deems that procurement eligible when it approves the divesture.
SEC. 3. Nothing in this act is intended to imply that procurement of electricity from third parties is the preferred method of fulfilling an electrical corporation's obligation to serve its customers at just and reasonable rates.
SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIIIB of the California Constitution.
SEC. 5. The sum of six hundred thousand dollars ($600,000) is hereby appropriated from the Public Utilities Commission Utility Reimbursement Account in the General Fund to the Public Utilities Commission for the purposes of implementing this act.
~~customers of an electrical corporation, as defined in Section 218 of the Public Utilities Code, will benefit by the creation of a~~

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~~diversified procurement portfolio consisting of both short-term and long-term electricity and electricity related products and lessening reliance on the spot markets, including the day-ahead and real time markets. This portfolio will bring needed price stability at reasonable prices to all consumers and may attract new electric supply into the State of California. Procurement responsibilities for the net open positions (load not served by utility retained generation) of the three largest electrical corporations are currently being met by the Department of Water Resources.~~

~~(b) It is the intent of the Legislature to do all of the following:~~

~~(1) Provide guidance for the procurement of electricity by an electrical corporation.~~

~~(2) Direct the Public Utilities Commission to establish standards under which the procurement of electricity and electricity related products by an electrical corporation will be deemed reasonable, and to the extent an electrical corporation requests, require the Public Utilities Commission to provide electrical corporations with an incentive to balance cost and risk goals for procurement.~~

~~(3) Eliminate the need for after-the-fact reasonableness reviews of an electrical corporation's electricity procurement contracts, practices, and related expenses.~~

~~SEC. 2. Section 332.3 is added to the Public Utilities Code, to read:~~

~~332.3. (a) At least 180 days prior to an electrical corporation resuming procurement responsibility, the commission shall implement an incentive mechanism applicable to the electrical corporation's procurement of electricity for its customers, including, but not limited to, the format and approaches of a request for proposals (RFP) process. If the commission fails to implement an incentive mechanism within the timeframe prescribed, all purchases entered into by an electrical corporation shall be deemed reasonable and recoverable in rates until the commission implements an incentive mechanism. In developing an incentive mechanism, the commission shall ensure that the incentive mechanism includes all of the following:~~

~~(1) Clear, achievable, and quantifiable objectives and standards.~~
~~(2) Timely recovery of procurement costs.~~
~~(3) Balanced risk and reward incentives.~~
~~(4) Predetermined market-based price benchmarks.~~
~~(5) Limited risk and reward for an electrical corporation.~~
~~(6) Safety valves for major market disruptions.~~

~~(b) The commission shall reflect in bundled service rates, and deem reasonable without a reasonableness review, any contract entered into by an electrical corporation in accordance with subdivision (a), and subdivisions (c) to (j), inclusive, or, through an application by an electrical corporation that has been approved by the commission.~~

~~(c) For purposes of this section, a long-term forward contract is a contract with a duration of not less than one month.~~

~~(d) As part of the incentive mechanism implemented pursuant to~~

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~~subdivision (a), the commission shall deem long-term forward contracts reasonable if one or more of the following conditions are met, or the commission may reject a long-term forward contract without prejudice and designate spot market purchases in lieu of the rejected contract as per se reasonable for the term of the rejected contract or until the commission approves a replacement contract:~~

~~(1) Those contracts are entered into pursuant to the results of an open, competitive bidding process. One acceptable form for an open, competitive bid is a request for proposals (RFP). The commission shall deem reasonable any contract which is among 33 percent of the lowest price bids, as determined by cumulative quantity, that are received for a particular product in a given RFP or other bidding process. An RFP shall be considered open and competitive for a particular product if the request was distributed to at least 15 potential suppliers and there are conforming offers submitted by at least three suppliers, and notice of the RFP was posted on the electrical corporation's Web site concurrently with the distribution of the RFP, subject to any restriction or limitation established by the commission pursuant to subdivision (a), or the transactions are entered into through electricity exchanges or brokerage services which may also include electronic platforms with access to more than 15 potential suppliers.~~

~~(2) The contract was entered into by the electrical corporation through the Independent System Operator, the Department of Water Resources, the California Consumer Power and Conservation Financing Authority, or any other market or exchange recognized by the commission.~~

~~(3) Electrical corporations may enter into long-term forward contracts outside of the process described in paragraphs (1) and (2). Those contracts shall be subject to gains or losses according to the incentive mechanism implemented by the commission pursuant to subdivision (a).~~

~~(e) An electrical corporation may file a procurement plan for the commission's review and approval. A procurement plan shall define all of the following:~~

~~(1) The specific electricity and electricity related products including type, quantity, duration, and timing of each product to be procured.~~

~~(2) The standards to be used in evaluating those products.~~

~~(3) A process for review and approval or rejection by the commission of contracts proposed by the electrical corporation pursuant to the plan.~~

~~(f) Contracts entered into pursuant to a commission approved procurement plan shall be deemed reasonable, shall be exempt from reasonableness review, and may not be eligible for gains or losses pursuant to the incentive mechanism implemented by the commission pursuant to subdivision (a).~~

~~(g) It is anticipated that the electrical corporation will need to enter into short-term transactions, either through the Independent System Operator's short-term markets or third-party transactions, in order to supplement long-term supply contracts, or to balance the~~

~~hourly load of its customers. Until the commission develops a benchmark that can be used for short-term procurement transactions in an incentive mechanism, these transactions by an electrical corporation shall be deemed reasonable. The commission may not adopt any benchmark for short-term electricity purchases unless that benchmark reasonably represents the market price of short-term purchases taking into account the timing of the purchases, the duration of the purchases, the location of delivery of the purchases, and other factors that are relevant to reasonably estimating market price.~~

~~(h) At least 180 days prior to an electrical corporation resuming procurement responsibility, the commission shall develop a process allowing electrical corporations to enter into financial and other contracts to moderate the price risk associated with serving its customers, including the price risk embedded in its long-term supply contracts. If the commission fails to adopt a process within the time prescribed, electrical corporations may enter into financial and other contracts to moderate the price risk associated with its procurement portfolio. The contracts may be gas-based or electricity-based. The contracts and the prices and premiums paid by the electrical corporations for the contracts shall also be deemed reasonable if the contracts are entered into by the electrical corporation for the purpose of hedging the price risk associated with the electrical corporation's procurement portfolio.~~

~~(i) A purchase transaction entered into between an electrical corporation and a renewable energy developer shall be deemed reasonable if contract prices to the electrical corporation for renewable energy are less than 115 percent of the average of the lowest bid established pursuant to paragraph (1) of subdivision (d). Any transaction entered into at market-based rates by an electrical corporation shall be deemed reasonable if the contract price to the electrical corporation is less than the incremental cost of the corporation's retained generation and contractual energy resources, where that generation and those resources can be reduced in output by an amount greater than or equal to the amount purchased.~~

~~(j) It is anticipated that the electrical corporations will need to procure from the Independent System Operator and third parties, or self-provide, ancillary and other related services, and be subject to charges by the Independent System Operator or its successor for imbalance energy, congestion charges, unaccounted-for-energy charges, neutrality adjustment charges, and grid management charges. Until the commission develops a benchmark that can be used for ancillary service, and other related services and charges that may be imposed by the Independent System Operator or its successor in an incentive mechanism, the costs incurred by an electrical corporation shall be deemed reasonable.~~

~~(k) It is anticipated that the electrical corporation will incur costs in connection with its procurement and risk management functions needed to serve its customers. These costs include the cost of staffing these functions as well as the cost of acquiring the maintaining systems needed to analyze, track, settle, and make~~

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~~payments pursuant to supply and hedging contracts, and the cost of meeting credit and collateral requirements. The costs incurred by an electrical corporation shall be recoverable in rates.~~

~~(l) Under the protection of Section 583, each electrical corporation shall file quarterly with the commission its long-term forward contracts and financial contracts, together with an explanation of how those contracts meet the guidelines set forth in this section. The commission may verify the accuracy of these submissions for the sole purpose of ensuring compliance with these guidelines.~~

~~(m) The commission shall adopt a ratemaking mechanism that ensures that the existing customers as of the date an electrical corporation enters into a bilateral contract to serve those customers remain responsible for, and pay, their proportionate share of the electrical corporation's obligations under each contract.~~

(END OF APPENDIX B)